

Notice of Allowability	Application No.	Applicant(s)
	09/981,987	KAMIGUCHI ET AL.
	Examiner Mark Blouin	Art Unit 2653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to RCE filed 10/7/04.
2. The allowed claim(s) is/are 1-4, 8, 14, 19-23 and 26-44.
3. The drawings filed on 19 October 2001 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some*
 - c) None
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date _____.
7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____.

Detailed Action

Response to Amendment

- The reply filed on November 15, 2004, was applied to the following effect: Claims 3,27-30, and 31 have been amended.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Kuesters on December 10, 2004.

The application has been amended as follows:

- Claim 13 is cancelled.
- Claim 11 is cancelled (depends from cancelled Claim 6).

Claim Rejections - 35 USC § 102

2. All relevant rejections have been withdrawn as being satisfied.

Claim Rejections - 35 USC § 103

3. All relevant rejections have been withdrawn as being satisfied.

Reasons for Allowance

4. Claim 1 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 5,7,9,10,12, and 15-18, are no longer

withdrawn from consideration since all of the claims to the other species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

5. Claims 1-4,8,14,19-23, and 26-44 (renumbered as 1-30) are allowed.

6. The following is an examiner's statement of reasons for allowance:

This application is for a magnetoresistance effect element.

- **Claim 1** specifies a magnetoresistance effect element, which requires:

“...a nitride, a fluoride, a carbide or a boride as a principal component and including holes of a metal phase of 2% to 30%. and the mean diameter of each of the holes of the resistance regulating layer is in the range from 10% to 100% with respect to the total thickness of the magnetization free layer, the non-magnetic intermediate layer and the magnetization fixed layer.”

These features, in combination with the other features of Claim 1, are not anticipated by, nor made obvious over, the prior art of record.

- **Claims 32 and 33** specifies a magnetoresistance effect element, which requires:

“...wherein the resistance regulating layer contains an oxide, a nitride, a fluoride, a carbide or a boride as a principal component and including holes, and the magnetoresistance effect element senses a relative angle between the magnetization direction of the magnetization fixed layer and the magnetization direction of the magnetization free layer by a change of current passing through the holes.”

These features, in combination with the other features of Claims 32 and 33, are not anticipated by, nor made obvious over, the prior art of record.

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

8. Applicant's arguments, see Paper filed November 15, 2004 with respect to Claims 1-4,8,14,19-23, and 26-44 have been fully considered and are persuasive. The rejection of Claims 1-4,8,14,19-23, and 26-44 has been withdrawn.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Blouin whose telephone number is (703) 305-5629. The examiner can normally be reached M-F, 6:00 am – 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful the examiner's supervisor, William Korzuch can be reached at (703) 305-6137. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314 for regular and After Final communications.

Any inquiry of general nature or relating to the status of application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

Mark Blouin
Patent Examiner
Art Unit 2653
December 8, 2004

A. J. HEINZ
PRIMARY EXAMINER
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